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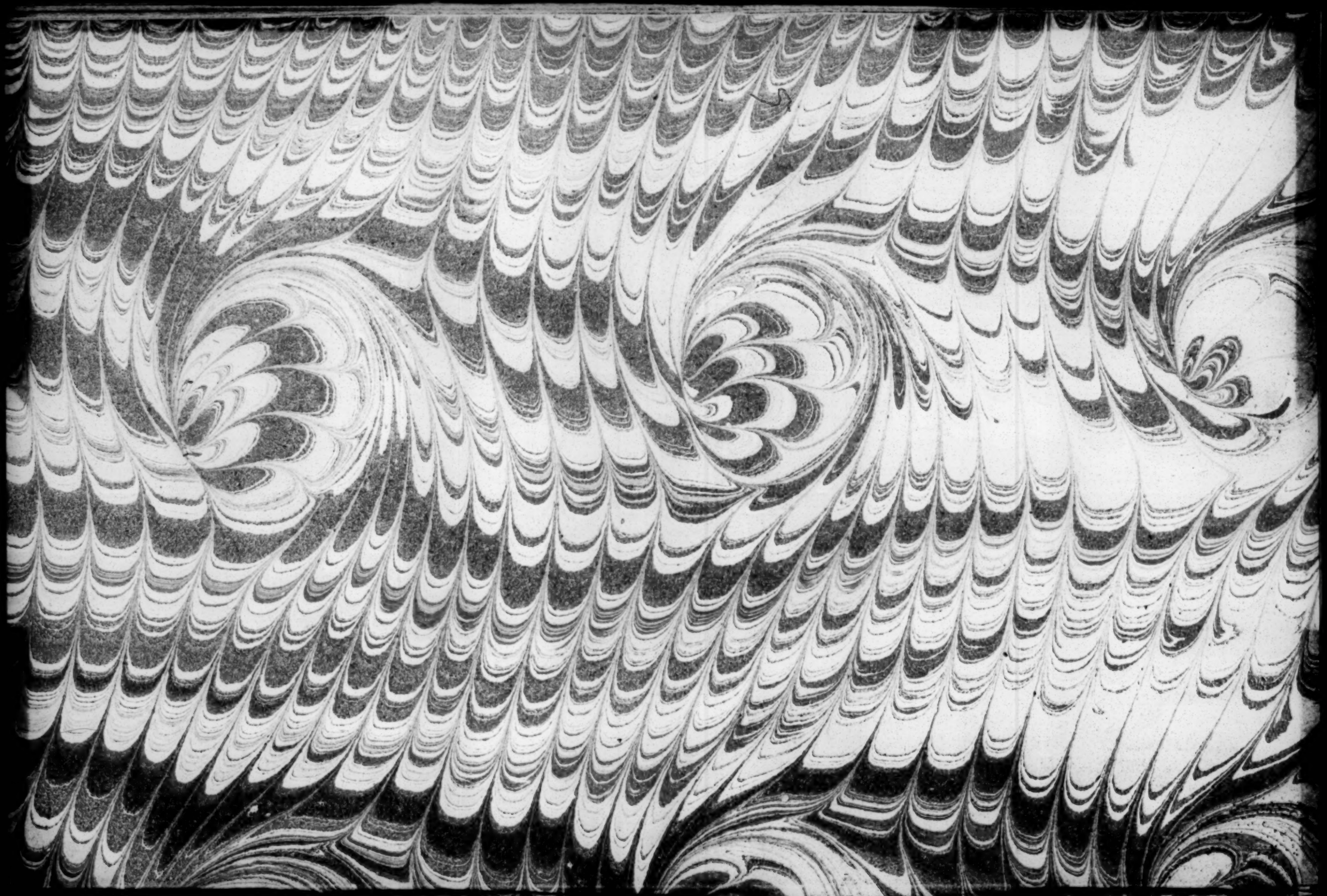

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REASONS

Humbly Submitted to the

CONSIDERATION

OF

Both Houſes

OF

Parliament;

For Paſſing of

An ACT for Preſervation of *Manors* and of *Copyhold-Eſtates* and *Tenures*.

Sic utere tuo ut alieno non lædas.

Anno Domini 1677.

The CASE between Lords of Manors and their Copyhold Tenants.

COpyhold Eſtates and Tenures have nothing but Cuſtom and Reputation for their ſupport.

Divers Perſons who hold their Lands and Tenements by Copy of Court-roll of ſeveral Manors, do uſe out of the Courts of ſuch Manors, *ſecretly* to demiſe their Copyhold Lands and Tenements, for ninety and nine years, or for ſome very long Terms of years, and having by ſuch *Secret* long Leaſes diveſted themſelves of all their valuable intereſt in ſuch Copyhold Lands and Tenements, do withdraw themſelves and their Suit from ſuch Manors, and depart into places remote and unknown, where their Deaths, and who ſhould ſucceed them in ſuch Copyhold Lands and Tenements are concealed from the Lords of ſuch Manors, and cannot be known and preſented as the ſame ought to be; by means whereof ſuch Lords do not only loſe the Suit of their Tenants unto the Courts of their Manors, and the Herriots that ſhould accrew unto them upon the Deaths of their Tenants, but the Widows and Heirs of ſuch Copyholders, who after their deaths ſhould be admitted Tenants unto ſuch Copyhold Lands and Tenements, being to receive but little or no profit by ſuch remote Reverſion, but much trouble and charge, in regard that by ſuch Copyhold Tenure they are liable to the payment of Rent, Herriots, Fines and Services according to the Cuſtom of ſuch Manors, ſuch Widows and Heirs have refuſed to come unto the Courts of ſuch Manors, and be admitted Tenants thereunto as they ought, by means whereof ſuch Lords have many times no Tenants admitted

unto such Copyhold Lands and Tenements, and are thereby defeated not only of such Fines of Income, as by the Custom of such Manors should accrew unto them by such Admittances, but also of their Rents, Herriots, Perquisits and Services, and have no remedy by Law to enforce them to be admitted Tenants. And the possession of such Copyhold Lands and Tenements being governed by such *Secret* long Leases, and not by Copy of Court-roll, such Copyhold-lands and Tenements are in manifest danger of getting the Reputation of Freehold Lands, and are often so pretended to be, to the manifest injury of such Lords not only in their Rents, Herriots, Fines, Perquisites and Services, but in the loss of their Tenures, and ruine of their several Manors. And Purchasers are oftentimes defeated, the said Leases being made in *Secret*, and not entred in the Rolls of the said Manor.

A Demonstration of the Truth of the CASE, and of the Reasonableness of the Remedy.

Copyhold lands are such as are and have been, time out of mind, *Tenementa Customaria Manerii*, &c. *& dimissa & dimissibilia per Copiam Rotulorum Curiæ Manerii*, &c. *Secundum Consuetudinem Manerii*, &c. So that to make a Copyhold Estate it is requisite, that it be by custome, time out of mind, demised and demiseable by Copy of Court-roll: If this fail, the Tenure by Copy is gone And therefore

1. A Copyhold Tenure cannot be created at this day (unless it be by Act of Parliament) because there wants a custom to support it.

2. If Copyhold-lands be once granted by deed, and not by Copy, the Copyhold Tenure is gone, because after such grant by deed, it cannot truly be said to have bin alwayes granted and grantable by Copy, and so the custom faileth.

So that from these premisses may be truly concluded, *That Custom and Reputation are the Life and Essence of Copyhold Estates and Tenures*, without which it is not possible for them to be or continue.

This is to be understood of Grants made by the Lord, for there may be Grants thereof made by the Copyholder, who by custom may Grant his Copyhold-lands by Lease for years, and the common law doth allow such customes of demiseing for years to be good.

But there is a Golden Rule which tells us.

Sic utere tuo ut alieno non lædas.

Every man ought so to use his *own*, whether Liberty or Property, as not to injure his Neighbours Freehold. It is lawful for me to encloſe my Grounds, but I may not thereby ſtop up my Neighbours way over it.

It is lawful for me to build on my Ground; but I may not thereby ſtop up the lights of my Neighbours houſe.

It is lawful to erect Lyme-kills and Dye-houſes, and to make Dung-hills, yet not ſo as that they become noyſom to the Neighbour-hood

Many other inſtances of the like nature may be made, but in a caſe ſo plain, theſe few may ſuffice.

In like manner it may be ſaid, that it is lawful for a Copyholder to make Leaſes of his Copyhold-lands, but for him to make ſuch *Secret* long Leaſes of his Copyhold-lands, as ſhall deſtroy the Reputation of the Tenure by Copy, this ſeemeth too much both in reaſon and conſcience, and therefore worthy the conſideration of both Houſes of Parliament, who alone can give relief in this caſe.

The *Secreſie* and prodigious length of ſuch long Leaſes, which govern the poſſeſſion of Copyhold-lands, are fatal to that cuſtom and Reputation which is the only life and ſup

port of Copyhold Eſtates and Tenures.

Where the cuſtom will warrant ſuch long Leaſes, let the Copyholders enjoy their cuſtom and the full benefit and advantages of ſuch Leaſes, but let them not be *Secret*, for therein lies the miſchief. Let but the Lord have notice of them, that thereby it may appear how the poſſeſſion thereof from time to time ſhall go, and that ſuch Lands are held of him by Copy, and it ſufficeth: Thus the cuſtom and Reputation of the Copyhold Tenure may be preſerved, and the Intereſt of both Lord and Tenant may ſtand together.

☞ But conſidering the *Secret Manner* wherein ſuch Leaſes are made, whereof the Lord hath no notice, how eaſie is it in any Manor to ſet up ſuch a cuſtom to make Leaſes, and the Lord ſhall not be able to help it? For ſuch a Leaſe being made, the poſſeſſion is thereby governed during the whole term; but how can the Lord tell what Eſtate ſuch Leſſee hath, or what Term he hath therein? poſſibly it may be but from year to year, as the common law alloweth; poſſibly it may be for many years, but this doth not appear to the Lord, nor without preſentment of ſuch Leaſes is it poſſible the Lord ſhould know it: And thus in time by ſuch *Secret* Practices, ſuch cuſtom may eaſily be ſet up in every Manor, and the Lord ſhall never know any thing of it, nor how to help himſelf, but his Manor muſt in time be ſurely deſtroyed, for it ſeemeth impoſſible to diſcover and obſerve the growth of ſuch a cuſtom.

That any Manor ſhould ſubſiſt under the Exerciſe of ſuch a cuſtom ſeemeth impoſſible, and if ſuch cuſtom had bin from the beginning, ſuch Manors wherein they now are, muſt long ſince have been deſtroyed, and therefore it may reaſonably be preſumed, That ſuch cuſtom of make-

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ing such *Secret* long Leases, began not by consent of the *Lords*, but by encroachment of their Tenants, and careleſsneſs of their Stewards and Servants, who are too often intereſſed in the Tenancy, and too apt to gratifie them, though to the prejudice of their Lords, and it ſeems unreaſonable to believe that the Lords of ſuch Manors ſhould contribute to a Malady ſo fatal to them: then might they juſtly forfeit that compaſſion they now Plead for. It is very hard that the *Lord* ſhould be enforced to crave help and relief againſt his own Servant; yet ſuch is the preſent caſe, and as the law now ſtands, it is not in the Lords Power to defend himſelf againſt the injury, nor to preſerve his Seignory; for this miſcheif lieth in the Copyholders Breaſt alone, nor is it poſſible for their *Lords* to defend themſelves againſt it: If a Copyholder be but minded to depart from that faith and truth, which in point of Tenure is due from him to his Lord, or to avoid thoſe Services to which by his Tenure he is bound, it is by this means at all times within his power to do it at his pleaſure, and the Lord cannot help himſelf: let him but make ſuch a *Secret* long leaſe of his Copyhold-lands, and the work is done: this *Secret* long leaſe of his Copyhold-land ſhall govern the poſſeſſion thereof during the whole term, let it be never ſo long, which ſhall be modeſtly ſuppoſed to be but for ninety and nine years (for in ſome Manors ſuch leaſes are made for two terms of ninety and nine years, and ſome for a greater number of years) within this ninety and nine years, through how many hands ſhall the poſſeſſion of theſe Copyhold-lands paſs? ſuppoſe the poſſeſſion to be changed but once in every ſeven years; in all this term it doth not appear to the Lord of the Manor, that there hath been any change of the poſſeſſion at all, nor can he know it for want

o *no tice* of ſuch leaſes, yet the Fact is otherwiſe, and ma-ny changes have been, and the Reputation of the Tenure is taken from the Poſſeſſion.

In all this long term, poſſibly there hath been no ſurrender of theſe Copyhold-lands, no preſentment of the Death of any Tenant, no Admittance of any Widow or Heir upon their death, nor any Badg of a Copyhold Tenure: Shall it not reaſonably be preſumed that theſe Lands are Free-hold lands, and not Copyhold? Can a man be ſaid to live, if he neither ſpeak, nor move, nor breath. Life is no otherwiſe demonſtrable, then by the Exerciſe of ſuch Acts: and if the occaſional Exerciſe of ſuch Acts as are peculiar to a Copyhold Tenure ceaſe, how can the Reputation of ſuch Tenure by Copy be preſerved?

It will be ſaid, That the Reverſion of the Copyholder in Fee doth deſcend upon and from Heir to Heir; But how then ſhall theſe Deſcents appear to the Lord? No way ſurely, but by Preſentment of the Death and Deſcent; But a Copyholder having by ſuch *ſecret* long Leaſes diveſted himſelf of all his valuable intereſt, the Reverſion in Fee is ſcarce worth the owning, becauſe ſuch Copyholder and his Heires are by the Copyhold Tenure liable to the payment of Rent, Herriots, Fines and Services, but have no preſent benefit by ſuch Reverſion to ballance the charge and trouble; And therefore (if we may judge of things by the Common Meaſures of profit and loſs) neither the Copyholder nor his Heires will ever own a Copyhold intereſt in a Reverſion ſo remote, and not only unprofitable but chargeable; For this end at this day, where the Cuſtom doth warrant ſuch *ſecret* long Leaſes, do the Copyholders make ſuch *ſecret* long Leaſes in truſt for themſelves, and ſurrender the inheritance thereof to

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ſome ſtranger, never more to be heard of; For this end do Purchaſers generally content themſelves with ſuch ſecret long Leaſes, and ſuffer the inheritance of ſuch Copyhold Lands to go where it will, as a thing of no value, nay, worſe then nothing, and thus at laſt the Lord hath no Tenant at all; for it is generally impoſſible for the Lord to have knowledge of the death of his Copyhold Tenants, and deſcent of their Copyhold intereſt, otherwiſe then by Preſentments: nor are ſuch Preſentments made, unleſs by Tenants, upon the information and at the inſtance of the Heir, upon the death of his Anceſtor, which for Reaſons already alledged, is not to be hoped for.

This was ſometimes a Grievance at the Common Law, and ſuch *Secret* long Leaſes of Freehold Lands have heretofore been found miſchievous, by putting from Lords the knowledge of their Tenants, ſo that they knew not upon whom by Order of Law, to avow for their Rents and Services, which occaſioned the making of that Statute 21 *H.* 8. *c.* 19. whereby the Lords were enabled to avow upon the land, without naming any Perſon certain for Tenant: But it ſeemeth that Copyhold lands are not within that Law. But

Ubi eadem Ratio ibi eadem Lex.

This miſchief is not only the ſame but greater, becauſe a Freeholders Tenure is the higheſt Tenure in every Manor, & cannot change or alter, but a Copyholders Tenure by ſuch Practices doth often get the Reputation of being Freehold, and if all the Copyholders by ſuch Practices ſhould become Freeholders (as in time they certainly muſt) there will be no Copyholders to ſupport the Manor, without whom it is impoſſible for a Manor to ſubſiſt, for *No Copyholder no Manor*; And therefore if the Lord ſhould purchaſe all the Copyhold

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Eſtates, except one, or if they ſhould all of them Eſcheat to the Lord, except one, or if they ſhould all become Freehold, except one, the Manor would thereby be deſtroyed for want of Copyholders, who are one of the Eſſential Branches, and Integral parts of every Manor, and without whom no Manor can ſubſiſt.

If the Lord had *Notice*, when ſuch Copyhold Lands are transferred by Leaſe, or were the Copyhold intereſt in reverſion of ſuch long Leaſes of any value, or free from the Rent, Herriots, Fines and Services, wherewith the Copyholder only is chargeable, or were an admitance to the Copyhold intereſt neceſſary to the Poſſeſſion, the Caſe would be much altered: But what can a dry reverſion in Fee after ninety nine years or more be worth, were there no Rent, Herriots, Fines or Services chargeable upon it? But when ſuch dry reverſion ſhall be preſently liable to ſuch charge and trouble, and bring in no preſent benefit, ſurely that which in the firſt caſe is worth but little, muſt in the ſecond caſe of neceſſity be worſe then nothing, becauſe the conſtant Rents and Services, and the occaſional Herriots and Fines accrewing to the Lord upon every Death and Alienation, may be often of more worth then the reverſion it ſelf, and therefore it is not reaſonable to believe that the Heir will be admitted Tenant upon a deſcent, or any man be ſo mad as to purchaſe it.

In very many Manors by ſpecial Cuſtom the Heir is bound to come into Court upon three Proclamations, and be admitted Tenant upon pain of Forfeiture, but unleſs it be by ſuch Cuſtom, the Lord hath no Remedy to compel the Heir to come in and be admitted Tenant, for by the common Law the Lord cannot take ſuch Forfeiture. It ſeemeth therefore reaſonable to make this a General Law for

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all Manors, and by Act of Parliament to inforce the admitance of the Widdow and Heir in every Manor upon the like Penalty.

Moreover, as to the descent thereof, how is it possible that the Lord should know whether his Copyholder marry or not, or how often he marrieth, or whether he hath children or not, or what children he hath, and of what Sex, or how they stand in Seniority, or how many he hath by one Wife, and how many by another wife, and how the variety of descents happen among his Tenants; For most or all of these things are necessary to be known in order to the finding out of the right Heir, which is impossible to be understood aright by any stranger, but by the Tenants themselves, and for want of the true knowledge thereof the Lord is at a loss for a Tenant, and knoweth not whom to demand to be admitted Tenant, and for want of some Remedy to enforce the Discovery and Admittance, no Widdow cometh to be admitted upon the death of the Husband, no Heir cometh to be admitted Tenant upon the death of his Ancestor, and so the Lord hath no Tenant nor any Fines of Income for want of Admittances.

Did the Lord know the Heir of his Copyhold Tenant, and were he enabled to take Advantage of such Forfeiture for his Non-Admittance he cannot compel him to be admitted Tenant, but he will rather forfeit a reversion so remote, unprofitable and chargeable, then be admitted Tenant; and surely the Reversion forfeited to the Lord is not more valuable in the Lords hands then it was in the Tenants, but full as bad, if not worse, for by such forfeiture the Lord gaineth no possession, but must wait until the reversion cometh to bear; and in the mean time he loseth all his present Rents and Services, and

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occasional Fines and Herriots, which are of far better value then the reversion, so that by such forfeiture he only pulls a thorn out of the Copyholders foot, and putteth it into his own.

To this it will be said, that the Lord may grant again such forfeited Copyhold Lands upon the old Rent and Services; But should it not first be considered, who will take a Grant of them, for upon such new Grant there is no possession to be gained; there are Rent, Herriots, Fines and Services to be paid and performed, yet nothing to ballance them but a dry, remote, unprofitable & chargeable reversion; and it is easily to be presumed, that the same reason which shall prevail with the Widows and Heirs of such Copyholders, rather to forfeit then be admitted Tenants unto their Copyhold interest, will also deterr a stranger from accepting thereof from the Lord upon a new Grant.

In some Manors are variety of Tenures and Customes, some Copyhold Lands descending to the eldest son, some to the youngest sonne; in some the Widows have estates by Custom for life, in others but only during Widowhood.

Some perform one Office, some another Office, and some perform no office at all: Some pay Herriots in kind, others Herriots in money, some no Herriots at all; Some have right of Common in the Lords Wasts, some have none at all, according to the variety of their several Tenures; In such Manors especially, these *secret* long Leases are most pernitious, because Lands of several Tenures being enjoyed together by such *secret* long Leases, the unity of the Possession confoundeth the diversity of Tenures, so that in few years it cannot be known, what Lands are of one Tenure, and what of another Tenure, nor what Lands de-

deſcend to the eldeſt, nor what to the youngeſt ſon, nor what Lands are chargeable with one Office, nor what with another Office, nor what with no Office at all; nor can it be known what Lands have right of Common, nor what have none at all: Some Copyholders, (beſides the particular ſervices they owe to their Lords,) are by Tenure bound to perform the Offices of Tithing-men, and ſome the Offices of Ale-taſters, Ancient and publick Offices, upon the due execution whereof much of the publick Peace and Weal depends, but the Copyholders only are chargeable with theſe Offices, and if there be no Copyholder there can be no ſuch publick Officer, and ſo the Publick alſo ſuffers by theſe *ſecret* long Leaſes, ſo that in ſhort,

Theſe *ſecret* long Leaſes of Copyhold Lands may truly be called *Nuſances*, or rather a Peſtilence, not only to ſuch Manors whereof ſuch Copyhold Lands are held, by bringing them to Ruine, but alſo to the Publick, in occaſioning the decay and neglect of ſuch publick Offices, to which by Tenure ſuch Copyholders are bound, for by this Practice there will be no Copyholder to perform them.

Thus theſe Copyhold Tenants throw off that faith and truth, which by Oath they are bound to bear unto their Lords, and ſuch Offices, which by their Tenure they are bound to pay to the publick, and deſtroy that Ancient Conſtitution of Manors, which hath been and flouriſhed in this Nation for many hundreds of yeares paſt, and all this is done by this their exorbitant Practice of transferring their Copyhold lands by Leaſe *ſecretly*, out of the Courts of ſuch Manors whereof they are held, for ſuch prodigious long termes of yeares, which occaſioneth the contempt of the Copyhold intereſt, as a thing not only of no valu, but worſe then nothing, by reaſon of the trouble and charge

charge attending it, without any manner of preſent profit, and that which is in Expectancy, is ſo remote, that it ſeemeth impoſſible for the Copyhold intereſt to out live ſuch long termes of yeares, for want of the due Exerciſe of that Cuſtom of being granted by Copy, without which the Reputation of the Copyhold Tenure muſt periſh, unleſs Relief be herein given by Authority of Parliament, which is humbly Propoſed in the Particulars following, *viz.*

1. *That all Leaſes of Copyhold Lands may be Preſented, to the end it may appear of what Tenure ſuch Lands are, and the Lord may have* Notice, *how the Poſſeſſion thereof from time to time ſhall go.* Co. lib 5. fo. 84 Peryams *Caſe.* A Cuſtom that a Feoffment ſhould be void, unleſs Preſented, is there adjudged good, much more reaſonable may it be, that ſuch Leaſes of Copyhold Lands ſhould be void, if not Preſented.

2. *That notwithſtanding ſuch Leaſes, Copyhold Lands may be always ſubject to the Copyhold Rents, Perquiſites and Services.*

3. *That until the death of the Copyhold Tenant who was laſt admitted be Preſented, (that the Lord may have* Notice *thereof) his death ſhall not be Pleaded in Barre of the Lords demands for Rent or Services.* By this means the Lord will have a Nominal Tenant at leaſt, from whom he may demand, and upon whom he may avow, for his Rent and Services, for the Lord cannot avow upon the Land for them, by the Statute of 21 H. 8. c. 19. without Naming of a Perſon certain for his Tenant.

4. *That the Widows and Heirs of Copyholders may be Compelled to be admitted Tenants upon pain of Forfeiture.*

It ſeemeth to be a Contradiction in it ſelf, That Copyhold lands ſhould be let by leaſe, for years; But in ſome particular Manors the Tenants have gained a Cuſtom to make leaſes thereof for 99 years, and ſome for longer termes.

From what hath been ſaid it doth appear,

1. *That where the Cuſtom Warranteth ſuch Leaſes, it is very miſchievous to the Lords, if they have not* Notice *thereof, that it may appear*

pear that such Lands are of Copyhold Tenure, and held of them, though granted by Lease for years by the Copyhold Tenants thereof, therefore they ought not to be secret. For

2. These secret long Leases of Copy-hold Lands govern the Possession thereof for the whole term of years, be it never so long, and thereby the Reputation of the Copyhold Tenure (which hath nothing but Custom and Reputation for its support) must certainly perish, because

3. The Reversion after a term of 99 years is so inconsiderable, that it is not the interest of the Heir of a Copyholder to be admitted Tenant, but rather it is his interest not to be admitted Tenant, thereby to avoid his Rent, Herriots, Fines, Perquisites and Services, and thus no Badge of the Copyhold Tenure shall remain, and the Lord shall not know who is his Tenant.

4. Did the Lord know the Heir of his Copyholder, he cannot compel him to be admitted Tenant, only in some particular Manors the Heir is bound upon three Proclamations to come into the Court, and be admitted Tenant upon Penalty of Forfeiture, but this is not so in all Manors by the Common Law, but only in some particular Manors by special Custom, and therefore very fit to be made a General Law in all Manors, especially in such Manors where such secret long Leases are made, because the Reversion is so little worth.

5. Such secret Conveyances of Freehold Lands have heretofore been found mischievous in manner aforesaid, and occasioned the making the Statute of 21 H. 8. c. 19. which gave Relief against them; But Copyhold Lands are not within that Statute, though not only under the same but greater mischiefs, and therefore it seemeth Reasonable to afford some suitable Remedy, also for Copyhold Lands against such secret Convayances.

It is very hard and severe with Lords of Manors, that their Copyhold Tenants should be able at their pleasure thus to destroy their Manors, and it should not be in the Lords power to prevent them.

But so it is in this Case, and neither the Courts of Law

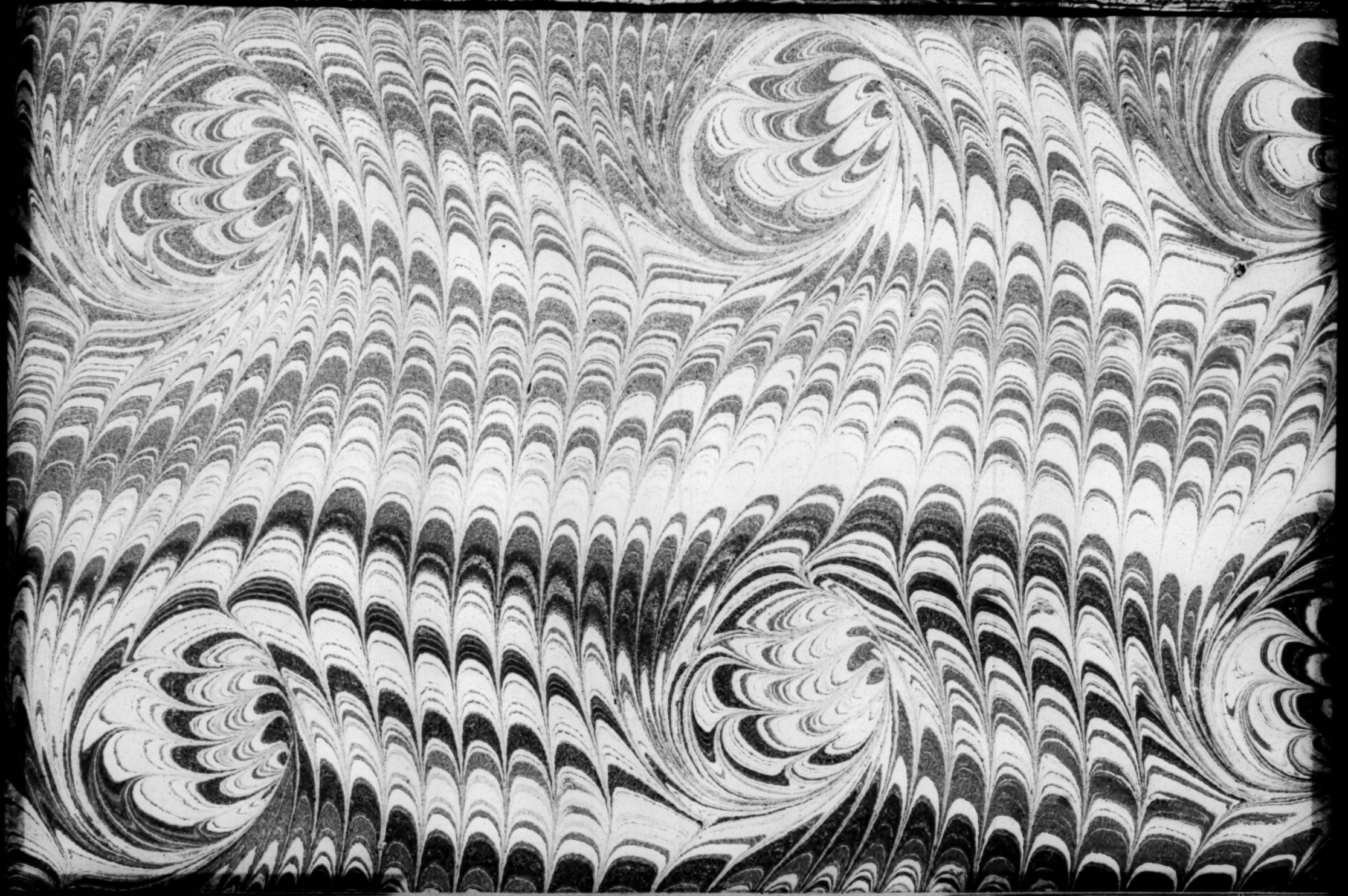
nor Equity can afford Relief, and therefore where the Law is defective, the only Remedy is to be had by Act of Parliament, which is humbly Propoſed in the Particulars aforeſaid, whereby the Rights on both ſides will be preſerved, and the Lords Remedy only enlarged.

Thus the Ancient Conſtitution of Manors, which hath been and flouriſhed in this Nation for many hundreds of years paſt may be preſerved.

Thus Copyhold Tenants and their Leſſees may enjoy the full benefit and advantage of their Cuſtomes and Eſtates.

Thus ſhall be given to Lords the things that belong to the Lords, and to Tenants the things that are the Tenants.

Thus the Landmarks of every ones Property may be preſerved, and let him that removeth them be accurſed.

Thus both Lords and Tenants enjoying their ſeveral Rights, ſhall live in Peace and Unity each with other, which is and ought to be the deſire and endeavor of every good Chriſtian.

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